

TO THE JOINT COMMITTEE ON APPROPRIATIONS  
TESTIMONY OF JAMES NEIL  
DIRECTOR OF OPERATIONS  
STATE MARSHAL COMMISSION  
FEBRUARY 23, 2009

Good afternoon, Senator Harp, Representative Geragosian, and members of the Appropriations Committee. My name is James Neil and I am the Director of Operations for the State Marshal Commission. As you know, the State Marshal Commission oversees and regulates the complex operations of Connecticut's State Marshals.

**Brief Background**

The State's Marshals, first as Sheriffs, have been a critical function of state government since the passage of the state constitution and still to this day some of the statutory provisions regarding the functions of State Marshals can be traced back to the late 1700's. Today they remain a critical function of the day to day operations of Connecticut's court system and, in fact, the court system could not function properly without them.

Judges, attorneys and State Marshals are the three core elements of the professional, civil justice system. Yearly, thousands of court documents pass through the hands of the 220 State Marshals who are specifically designated to do the work. Essentially, most civil litigation cannot occur without the Marshals. Additionally, traditional government functions that allow for trespass, arrest, evictions, and seizure of personal property, through service of process and executions by State Marshals, requires regulation and oversight.

The Marshals provide a wide variety of services to the citizens of Connecticut each and every day including but not limited to: civil service of process which includes executions on judgments, the service of temporary restraining orders, and the execution of *capias mittimus* warrants whereby individuals are taken into custody for the failure to appear in a civil matter – usually on child support matters. Currently there are 220 State Marshals and we are in the process of appointing 21 additional Marshals. There are more than 100,000 cases either pending or filed in Connecticut's civil courts each year and if we assume for a moment that there is a minimum of 2 documents in each case that requires service of process, in some cases there are considerably more, State Marshals serve a minimum of 200,000 documents each year, and that is just the beginning – there are also thousands of court ordered civil executions that are served and processed by State Marshals each and every year, and the numbers

are growing. As you can see it is a very active business which is critical to the operation of the civil justice system.

### The State Marshal Commission Today

As you are aware, the State Marshal Commission has an extremely large mission and a very small amount of resources. The Commission appoints, trains, disciplines, and oversees and regulates the activities of Connecticut's State Marshals, who are charged with serving all manner of legal process in the State. It should be noted that State Marshals are independent contractors with state appointments and must be distinguished from Judicial Marshals, who are state employees within the Judicial Branch and who are responsible for courthouse security. The SMC has in place a complaint and hearing procedure in full compliance with the Uniform Administrative Procedures Act where the citizens of Connecticut can bring disputes they may have with any of the Connecticut's State Marshals.

Additionally, the administrative staff fields thousands of contacts – calls, letters, emails – from citizens, lawyers, state agencies, and judges annually with questions and problems with the complex world of civil process which is the means by which the court exercises its jurisdiction over individuals and property.

Currently, the staff of the Commission consists of only 2 professionals and 2 administrative staff. As a result, legislative mandates to appoint, train, audit, and discipline have been challenging to implement. In our opinion, in order for the office to fully, and effectively implement certain statutory mandates, it is imperative we have additional staff, however, in these extraordinary difficult times the Commission can and will do without.

Because the SMC is small, its budget is exceedingly simple – personal services and other expenses. I offer savings in both accounts: the reduction of one position from the staff offices of the SMC for most of the biennium under discussion, which is a 25% reduction in the administrative workforce – this would be through a planned retirement and no request to fill the position until an economically appropriate time - as well as a matching 25% decrease in OE. This translates into annual savings of approximately \$101,000 or 22%. That savings would bring the annual budget for the SMC to approximately \$355,220 or just 1.6% of the income reported by State Marshals in 2007 – an amount sure to increase significantly for 2008, which would make the slight 1.6% even smaller. It should be noted that since I assumed the duties of the Director of Operations, the SMC has returned a significant percentage of OE money to the general fund each and every fiscal year. The SMC has had a culture of frugality and

responsible spending in the past and that will continue into the future. As you can see by the table below, the SMC has returned an average of approximately 37% of its OE budget over the past 5 years:

<u>Year</u>	<u>Funds Spent</u>	<u>Appropriation</u>	<u>Unspent Funds</u>
2004	\$81,692.70	\$106,374.32	\$24,681.62
2005	\$74,913.85	\$125,325.00	\$50,411.15
2006	\$35,504.17	\$113,801.00	\$78,296.83
2007	\$99,078.02	\$113,801.00	\$14,722.98
2008	\$94,659.14	\$162,870.00	\$68,210.86

To be sure, a reduction in staff and OE money will bring a certain stress to not only the staff and the SMC itself, but to Connecticut's State Marshals as well. But difficult times require extraordinary efforts and the SMC, its staff, and the Marshals themselves stand ready to put forth that effort. Additionally, I have suggestions for the other side of the equation – to increase revenues – that I will discuss with leadership.

The idea that the mission of the SMC can be integrated at a cost savings into an administrative agency is not sound. The current proposal is to eliminate the SMC and to transfer the administrative duties, however, there are no funds associated with this transfer. Although there is a perceived savings of approximately \$450,000 in the current proposal, the ability to implement the duty of the State to oversee a critically vital governmental function is absent. The total cost of the oversight and regulation of the State Marshals is in those administrative duties. The Commission itself is voluntary with little, if any, cost. Members serve during their own time – we meet in the evening – receive no compensation, and do not even look for the reimbursement of their personal costs.

### Legal and Constitutional Concerns

Prior to 2000, the constitutional significance of civil process and executions was reflected in the position of sheriff being placed in the constitution where it had been for more than 200 years. When this provision was repealed in 2000, the legislature established the State Marshal Commission to oversee and regulate State Marshals. As the Attorney General has noted, service of process in Connecticut has always been considered a sovereign function of government entrusted to public officials empowered by law. State Marshals are public officers who take an oath to uphold the Constitution and the laws of Connecticut.

The legislature understood the power of the appointment as a State Marshal in creating the State Marshal Commission. State Marshals have the

power to trespass, to remove people from their homes and businesses from their locations, to arrest, to garnish wages, execute against bank accounts and personal assets, and take possession of property such as cars, boats, and manufacturing equipment and supplies. These broad and enormous powers cannot be vested in individuals without regulatory oversight – that was indeed part of the problem with the old sheriff system.

The legislature, in 2000, carefully considered its obligations under the constitution and to each branch of government in this area. To that end it created the State Marshal Commission, with Commission members appointed by all three branches of government, and placed the Commission in the executive branch for administrative purposes only. In order to make an appropriate delegation of its regulatory powers to the Commission, the legislature had to declare its policy on service of process and execution of judgments, establish primary standards for carrying it out, to which the Commission needed to conform and to ensure proper regard for the protection of the public's interest. It appropriately did so through statutory enactments creating the State Marshal Commission.

Eliminating the State Marshal Commission and placing functions solely in the executive branch and eliminating the funding for those functions puts the constitutional duties of all three branches at issue. It also puts the judicial branch at risk for a substantial destabilization of its courts and civil matters in general. The current system is running well, due in part to the unsung consistency of the State Marshals and the careful oversight of the SMC. Millions of dollars of third-party money and hundreds of thousands of services and executions are handled by State Marshals every year under the guidance of the SMC. The nature of State Marshals' tasks and the need for State Marshals to be competent, accountable public officials under appropriate oversight creates unique regulatory needs that the SMC fulfills. Consider that even a few short days of the serious disruption of State Marshal work would create havoc in the judicial branch.

In Connecticut there is a right to open access to courts to commence and pursue redress for injuries after due course of law. If an individual is denied open access or remedies, through the denial of service of valid process or the execution of a judgment based on the lack of regulation, or inadequate regulation by the State over such procedures and State Marshals, the State could face liability claims under the constitution and state statutes. That is one of the reasons State Marshals are bonded. Just a few claims would cost the State more money than is currently allocated to the SMC. Additionally, disruption to the orderly functioning of the judicial branch would raise claims under the separation of powers doctrine and could engender additional claims or costs to re-stabilize the system.

Given the constitutional framework, the State has an obligation to maintain a system for viable, regulated service of process and execution of judgments. The recommendation to eliminate the State Marshal Commission and to remove all funding does not address the constitutional needs and obligations of the three branches of government. Money will inevitably have to be allocated to regulate service of process and execution of judgments and State Marshals, as a core government function and to protect the State from liability. The State Marshal Commission balances the interests of the branches and is extremely cost effective. It is critical that the SMC be retained with reasonable funding for staff.

### **Conclusion**

During times of general economic hardship State Marshals see an increase in their workload. The steep rise in home and business foreclosures, the eviction of families and businesses from their homes and commercial space, and the increase in litigation and the associated execution of judgments as individuals and companies look to gain every financial advantage possible all place additional stress and work on the ranks of Connecticut's State Marshals. It is during this time that more oversight is needed, not less. State Marshals assist citizens in countless areas from civil and family court matters, housing court and probate court matters and numerous other legal and administrative procedures. Additionally, State Marshals execute city and state tax warrants and in 2007, State Marshals collected more than \$10 million for Connecticut's cities and municipalities – they also collected approximately \$20 million for private parties as a result of litigation. Also under the direction of the SMC the State Marshals cover the service of restraining orders every day and in every courthouse helping to protect the citizens of Connecticut from harm. It is during this time that the mission of the SMC is more critical than ever.

State of Connecticut  
STATE MARSHAL COMMISSION

Herbert J. Shepardson, Esquire  
Chairperson

James Neil, Esquire  
Director of Operations

February 19, 2009

The Honorable M. Jodi Rell  
Governor of the State of Connecticut  
State Capitol  
210 Capitol Avenue  
Hartford, CT 06106

Dear Governor Rell,

I write to you today to communicate my grave concerns, on several levels, regarding the proposed elimination of the State Marshal Commission (SMC) and its funding. The SMC is one of the most cost efficient agencies in state government providing oversight and regulation of a constitutionally based business that reported an income of nearly \$22 million for 2007 and handles an additional estimated \$30 million annually in trust funds for the citizens, towns, and municipalities of Connecticut – the approved SMC budget for the past two years averaged approximately \$446,000, of course there were cuts and mitigation measures which reduced that amount.

The State Marshal Commission (SMC) was created by the General Assembly in 2000. The impetus in its creation was wrongdoing in a Sheriff system that lacked appropriate oversight and accountability. The design of the SMC directly addressed oversight and accountability and we have created a system that is more efficient and more accessible for the citizens of Connecticut. The SMC is made up of eight members from all three branches of government and both major political parties, and is a neutral, non-partisan oversight and regulatory body whose mission is to ensure that Connecticut's State Marshals carry out the statutory duties of their office. As you are aware, the SMC appoints, trains, disciplines, and oversees and regulates the activities of Connecticut's State Marshals, who are charged with serving all manner of legal process in the State.

The purpose of this letter is three-fold. The first is to provide ideas for revenue enhancement and cost reduction for the SMC. The second are the vital policy issues involved in the independent oversight of a critical governmental function, and finally the constitutional and legal concerns the proposal to eliminate the SMC has raised.

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In the current economy, all agencies, the SMC included, should be asked what in its regulatory authority can it do or suggest to increase revenue for the state and to reduce expenses. I have not yet been asked that question, but I will take this opportunity to offer you several ideas. With a projected budget for the next fiscal year of a mere \$456,220, the SMC is already "lean and mean," and for the past three years I have been asking for additional resources to capitalize on our strengths and shore up our weaknesses, but we are in extraordinary economic times and the SMC, like every agency, can do better. On the expense side I can offer significant savings and on the revenue side I offer ideas regarding fees that Connecticut's State Marshals pay.

Because the SMC is small, its budget is exceedingly simple – personal services and other expenses. I offer savings in both accounts: the reduction of one position from the staff offices of the SMC for most of the biennium under discussion, which is a 25% reduction in the administrative workforce – this would be through a planned retirement and no request to fill the position until an appropriate or necessary time – as well as a matching 25% decrease in OE. This translates into annual savings of approximately \$101,000 or 22%. That savings would bring the annual budget for the SMC to approximately \$355,220 or just 1.6% of the income reported by State Marshals in 2007 – an amount sure to increase significantly for 2008, which would make the slight 1.6% even smaller. It should be noted that since I assumed the duties of the Director of Operations, the SMC has returned a significant percentage of OE money to the general fund each and every fiscal year. The SMC has had a culture of frugality and responsible spending in the past and that will continue into the future. As you can see by the table below, the SMC has returned an average of approximately 37% of its OE budget over the past 5 years:

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The SMC has the statutory obligation to collect a fee of \$250 annually from each Marshal. This fee has remained stable since its inception in 2001, and clearly the time has come to institute an increase. On October 1, 2009, 240 or so State Marshals will pay their annual fee – at current levels that will mean \$60,000 paid into the general fund, or about 17% of the reduced SMC budget. As you can see, an increase in the fees can fully fund the SMC if State Leadership desires, or at the very least, an increase in fees can fund a substantial portion of the SMC. That increase could be a flat fee or a percentage of income –

either a uniform number or a sliding scale with the high earners paying a higher percentage. Additionally, a small increase in the fees for the service of process for private party actions and litigation, as well as out-of-state service, can not only increase the income of State Marshals and therefore increase revenue into the general fund, but can also soften the effect of an increase in the annual fee they pay.

To be sure, a reduction in staff and OE money will bring a certain stress to not only the staff and the SMC itself, but to Connecticut's State Marshals as well. But difficult times require extraordinary efforts and the SMC, its staff, and the Marshals themselves stand ready to put forth that effort.

During times of general economic hardship State Marshals see an increase in their workload. The steep rise in home and business foreclosures, the eviction of families and businesses from their homes and commercial space, and the increase in litigation and the associated execution of judgments as individuals and companies look to gain every financial advantage possible all place additional stress and work on the ranks of Connecticut's State Marshals. It is during this time that more oversight is needed, not less. State Marshals assist citizens in countless areas from civil and family court matters, housing court and probate court matters and numerous other legal and administrative procedures. Additionally, State Marshals execute city and state tax warrants and in 2007, State Marshals collected more than \$10 million for Connecticut's cities and municipalities. Also under the direction of the SMC the State Marshals cover the service of restraining orders every day and in every courthouse helping to protect the citizens of Connecticut from harm. It is during this time that the mission of the SMC is more critical than ever.

The constitution of Connecticut establishes three distinct branches of government, executive, legislative and judicial. Exclusive functions exist in each, but areas overlap, such as service of process and the execution of judgments, the mainstays of the mission and business of state marshals. The constitution, under Article first, section ten, provides people with a constitutional right to open access to courts and remedies for injuries through due course of law without sale, denial or delay. All three branches protect these rights.

The legislature under its duties establishes laws regarding rights and remedies including procedures for service of process and the execution of judgments in civil matters and the regulation of such procedures, including statutory caps on fees for service and execution to ease access. The executive branch enforces such laws and the judicial branch, through the application of statutes, Practice Book provisions and case law ensures the administration of justice. Each branch of government also has a constitutional obligation, under separation of powers principles, not to act so as to significantly interfere with the



orderly functioning of another branch. A failure by the State to ensure these functions could lead to liability claims against the State.

Prior to 2000, the constitutional significance of civil process and executions was reflected in the position of sheriff being placed in the constitution where it had been for more than 200 years. When this provision was repealed in 2000, the legislature established the State Marshal Commission to oversee and regulate State Marshals. As the Attorney General has noted, service of process in Connecticut has always been considered a sovereign function of government entrusted to public officials empowered by law. State Marshals are public officers who take an oath to uphold the Constitution and the laws of Connecticut.

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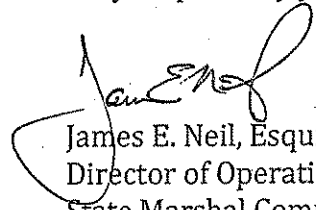
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I am at your service and available to discuss the vast mission of the State Marshal Commission with you at your convenience.

Very respectfully yours,



James E. Neil, Esquire  
Director of Operations  
State Marshal Commission

cc: Speaker of the House Christopher G. Donovan  
President Pro Tempore of the Senate Donald E. Williams  
Senate Majority Leader Martin M. Looney  
Senate Minority Leader John McKinney  
House Majority Leader Denise Merrill  
House Minority Leader Larry F. Cafero  
Chief Justice Chase T. Rodgers  
Co-Chairman, Judiciary Committee Representative Michael P. Lawlor  
Co-Chairman, Judiciary Committee Senator Andrew J. McDonald